IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8283 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDIBEN RAMANBHAI RANA MOTHER OF DETENUE GITABEN W/O

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat, passed an order on August 1, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenu under the provisions of the PASA Act.

2. The grounds of detention indicate that the detaining authority took into consideration various

offences registered against the detenu, besides statements of two anonymous witnesses in respect of incidents dated June 20, 1999 and July 4, 1999. The detaining authority came to conclusion that the statements recorded are correct and the fear expressed by them is genuine and, therefore, their identity is required to be kept anonymous. The authority, therefore, exercised powers under Section 9(2) of the PASA Act. The authority came to a conclusion that the detenu is a bootlegger and she is required to be detained under the PASA Act in order to immediately prevent her from pursuing her illegal activities. The detaining authority also considered the possibility of resorting to less drastic remedy while passing the order.

3. The petitioner, who has preferred the petition for detenu-Gitaben, wife of Ramesh Tarachand Patil, has raised many contentions in the petition. However, learned advocate, Mr. Kapadia, appearing for the petitioner has restricted his submissions to the fact that the detenu is an illiterate lady and she has not been explained the contents of the grounds of detention and other relevant papers in her mother tongue and, therefore, there is non-communication of grounds of detention, which has affected the right of the detenu of making an effective representation.

4. In the petition, in paragraph 21, it is contended as under :-

> "The petitioner submits that the detenu is an illiterate lady and, therefore, the serving officer was required to explain all the papers running into 22 pages to the detenu in her mother tongue, i.e. in Gujarati orally."

5. The detaining authority or the officer who served the order of detention has not filed any affidavit in reply. The averment of the petitioner supported by an affidavit has, thus, remained uncontroverted. If the detenu is illiterate and is not explained the contents of the order of detention and the grounds of detention, the detenu would not know for what the detenu is detained. Thus, there is non-communication of the grounds and the detenu, therefore, would not be able to make an effective representation against the order. This would infringe the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. The continued detention, therefore, would stand vitiated. The petition, therefore, deserves to be allowed on this ground alone.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 1, 1999, passed against the detenu is hereby quashed. The detenu-Gitaben, wife of Ramesh Tarachand Patil is ordered to be set at liberty forthwith, if not required in any other matter. It is stated by Mr. Kapadia that the detenu is now transferred to Sabarmati prison. The writ to go to the Superintendent of Sabarmati Prison. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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